

each issue below.²⁶⁸ For the reasons given, we grant in part and deny in part the *Petitions*.

B. Discussion

1. Communication Assistants (CAs)

a. CA Minimum Typing Speed at Hire

82. In the *Improved TRS Order*, the Commission adopted a minimum typing speed for communications assistants of 60 words per minute (wpm).²⁶⁹ VISTA and WorldCom request that the Commission reconsider this provision and permit CAs to have a minimum typing speed of 45 to 55 wpm.²⁷⁰ VISTA proposes requiring a 55 wpm for newly hired CAs, with a training period of 90 days, and that at the end of the training period new hires must pass the typing speed test at 60 wpm. VISTA states that, in its experience, after such a training period its newly hired CAs are able to meet Massachusetts Relay's requirement of 65 wpm.²⁷¹ WorldCom agrees with VISTA on having a 90-day training period, but proposes a 45 wpm requirement for newly hired CAs.²⁷² In support of this request, VISTA and WorldCom argue that in their experience, a lower minimum typing speed requirement for new hires and a 90-day training period is necessary in order to identify, hire, and train qualified persons to provide TRS.²⁷³ Sprint agrees with VISTA's proposal to exclude newly hired CAs from the 60 wpm requirement until they have had a reasonable period for on-the-job training.²⁷⁴ Sprint, VISTA and WorldCom assert that the minimum 60 wpm requirement would severely hamper the ability to hire new CAs and would eliminate some excellent potential CAs without giving them the opportunity to develop their skills.²⁷⁵

83. NAD/TAN/CAN and SHHH oppose lowering the minimum typing speed requirement and counter that there are technology and software applications that can assist in increasing typing speed.²⁷⁶ NAD/TAN/CAN also asserts that there is a sufficient pool of potential, qualified CAs available.²⁷⁷ Ultratec asserts that technology can assist new CAs to

²⁶⁸ In addition to the issues addressed in this *Order on Reconsideration*, the *WorldCom Petition* raises issues relating to: (1) reimbursement according to session time for STS and VRS; and (2) whether the Commission has authority to allow recovery of intrastate VRS costs from the Interstate TRS Fund. See *WorldCom Petition* at 9-12. We will defer these issues to a future proceeding concerning TRS cost recovery.

²⁶⁹ See *Improved TRS Order* at ¶ 74; 47 C.F.R. 64.604(a)(1).

²⁷⁰ *Vista Petition* at 6; *WorldCom Petition* at 12-13.

²⁷¹ *Vista Petition* at 2.

²⁷² *WorldCom Petition* at 13.

²⁷³ *Vista Petition* at 6; *WorldCom Petition* at 13.

²⁷⁴ Sprint Comments at 2-3.

²⁷⁵ See, e.g., *Sprint Petition* at 2-3; *Vista Petition* at 2; *WorldCom Petition* at 13.

²⁷⁶ NAD/TAN/CAN Comments at 3; SHHH Comments at 2.

²⁷⁷ NAD/TAN/CAN Comments at 3.

easily reach 60-80 wpm with a one-percent or less error rate, without lengthy training.²⁷⁸

84. We conclude that our requirement that CAs must transmit words at a minimum speed of 60 wpm is a reasonable and necessary minimum to reduce the length of TRS calls, and therefore to provide functionally equivalent service. We agree with NAD/TAN/CAN, SHHH, and Ultratec that numerous options exist to increase the manual typing speed of CAs, including the use of speech recognition technology. Certainly a new hire without any CA experience is not capable of performing the job without some training, and our requirement does not obviate a training period for CAs.²⁷⁹ We find, however, that it is reasonable to expect a trained typist, with or without technological assistance, to meet the 60 wpm minimum. We clarify that a CA must test at 60 wpm prior to the time he or she first begins facilitating TRS calls for the public.

85. We conclude that the rule requiring CAs to provide a typing speed of 60 wpm is reasonable and necessary under the functional equivalent mandate.²⁸⁰ We also note that since the implementation of the 60 wpm typing speed requirement, the Commission has not received any indication from TRS users that TRS providers are not able to meet the 60 wpm requirement. Accordingly, we find that VISTA's and WorldCom's concerns are without merit. For these reasons, we deny the *Petitions* on CA typing speed.²⁸¹

b. CA 'Hot Key' To Alert Caller To Pre-Recorded Message

86. In the *Improved TRS Order*, the Commission adopted a new rule requiring CAs to alert the TRS user to the presence of a recorded message and interactive menu by using a hot key on the CA's terminal.²⁸² The *Florida PSC Petition* proposes that this rule should be clarified or amended to indicate that technology other than a hot key on the CA's terminal can be used to achieve the same notification. The Florida PSC asserts that "the rule should not be so limiting of possible technology alternatives."²⁸³

87. We clarify that the term "hot key" is not associated with any one technology. Our intent is to indicate a one-stroke technology at the CA terminal that "would send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been

²⁷⁸ Ultratec Comments at 9.

²⁷⁹ Our rules require that CAs "be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing or speech disabilities; and that CAs have competent skills in typing, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette." 47 C.F.R. § 64.604(a).

²⁸⁰ This requirement is waived for STS and VRS CAs because it is not applicable to those forms of TRS. See *Improved TRS Order* at ¶ 41 (STS waiver), ¶ 42 (VRS waiver).

²⁸¹ NASRA states their concern that a change in the minimum typing speed may have an impact on current and recently negotiated contracts. Because we do not alter this requirement, NASRA's concerns are moot. However, we expect that any contract language between state TRS programs and TRS providers will reflect the parties' understanding that should our regulations be modified during the contract period, our federal requirements supersede any conflicting previous contract language.

²⁸² *Improved TRS Order* at ¶ 94; 47 C.F.R. § 64.604(b)(6).

²⁸³ *Florida PSC Petition* at 5.

encountered,²⁸⁴ and thereby enable the TRS user to request a summary of any recorded message. Accordingly, we clarify that TRS programs and providers may select their own technology, so long as the functionality of a hot key is provided.

c. CA In-Call Replacement Time and Session Logs for STS

88. In the *Improved TRS Order*, the Commission required that CAs must stay with an STS TRS call for a minimum of 15 minutes.²⁸⁵ This requirement was established to minimize disruption to an STS caller by ensuring that the time invested by the STS caller with a STS CA to ensure that the CA understands the STS caller's speech is not lost by an abrupt transfer to a new CA.²⁸⁶ WorldCom requests that the Commission extend the effective date of this requirement for one year.²⁸⁷ WorldCom asserts that this requirement will reduce the availability of each STS CA by one hour per day, which will increase the provider's expenses by approximately 15 percent.²⁸⁸ WorldCom also requests that the Commission require STS providers to keep a log of average and minimum session times to give the Commission an accurate picture of STS usage.²⁸⁹

89. The *Improved TRS Order* required STS relay services to be offered by March 1, 2001.²⁹⁰ WorldCom's objection was raised prior to implementation date of this rule. TRS providers were given nearly one year from the release of the *Improved TRS Order* to implement STS, including the in-call replacement requirement for STS CAs. For this reason, WorldCom's request for a one-year extension of the effective date, even if the request for an extension of time to comply had been promptly granted, would have been of little practical effect. Further, the *WorldCom Petition* provides no evidence not considered in the *Improved TRS Order* and offers no persuasive arguments in support of its assertions. STS has been successfully provided since that time and the Commission has received no complaints about this requirement. Therefore, we conclude that the Commission's requirement that a CA remain with a STS caller for a minimum of 15 minutes is a reasonable mandatory minimum standard. Finally, we deny WorldCom's request to require STS providers to keep a log of average and minimum session times. The Commission's rules already require that TRS providers provide the Interstate TRS Fund Administrator with true and accurate data, including total minutes of use, total interstate minutes of use, and total TRS operating expenses,²⁹¹ and we believe this information is sufficient.

d. Qualified Interpreter Definition

90. In the *Improved TRS Order*, the Commission adopted the U.S. Department of

²⁸⁴ *Improved TRS Order* at ¶ 94.

²⁸⁵ 47 C.F.R. § 64.604(a)(5).

²⁸⁶ *Improved TRS Order* at ¶¶ 70-71.

²⁸⁷ *WorldCom Petition* at 8-9.

²⁸⁸ *WorldCom Petition* at 8-9.

²⁸⁹ *WorldCom Petition* at 9.

²⁹⁰ *Improved TRS Order* at ¶ 17.

²⁹¹ 47 C.F.R. § 64.604(c)(5)(iii)(C).

Justice (DOJ) definition of "qualified interpreter."²⁹² WorldCom asserts that the Commission should suspend the requirement that TRS providers use qualified interpreters.²⁹³ WorldCom argues that the standard enacted by DOJ was intended to apply to situations where the interpreter is employed by a private agency that does not have common carrier responsibilities, unlike TRS providers. WorldCom asserts that such agencies can simply not take business for which it has no qualified interpreter. TRS providers, on the other hand, cannot turn calls away. WorldCom argues that the "qualified interpreter" requirement would force TRS providers to have a VRS interpreter for every specialized professional vocabulary.²⁹⁴ WorldCom further argues that the Commission has not considered the cost implications of this requirement, which it believes is significant enough to discourage voluntary provision of VRS. NAD/CAN/TAN opposes the *WorldCom Petition*, and asks the Commission to maintain its definition of qualified interpreter, noting that if an interpreter is not qualified to convey all the necessary vocabulary, he or she can call upon another VRS CA to assist with the call.²⁹⁵

91. We decline to suspend the definition of "qualified interpreter." VRS users must have an expectation of reaching a qualified interpreter in order to have confidence in relay services. The alternative would be to allow unqualified interpreters to function as VRS CAs, that is, interpreters unable "to interpret effectively, accurately, and impartially" and incapable of "using any necessary specialized vocabulary." The definition of qualified interpreter was adopted to protect VRS users from encountering interpreters who lack the skills necessary to interpret VRS calls. It is therefore not in the public's interest to suspend the Commission's definition of qualified interpreter.

92. We do not find WorldCom's assertion that this definition will require TRS providers to hire separate VRS interpreters for "every specialized professional vocabulary" to be persuasive.²⁹⁶ Interpreters necessarily encounter diverse audiences and topics. In general, they are conversant in the vocabularies of various professions and fields. As a "profession [that] serves a population with varied communication needs and language skills, interpreters must be versatile in order to meet the challenges which may arise in any interpreting situations."²⁹⁷ Finally, WorldCom's assertion that the Department of Justice's definition of qualified interpreter "applies to situations where the interpreter travels to events," rather than the work environment experienced by VRS interpreters,²⁹⁸ is not supported by the language of the regulation.²⁹⁹

²⁹² *Improved TRS Order* at ¶ 48; see 47 C.F.R. § 64.601(14), providing that a qualified interpreter is an "interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary."

²⁹³ *WorldCom Petition* at 10.

²⁹⁴ *Id.*

²⁹⁵ NAD/TAN/CAN Comments at 9.

²⁹⁶ *WorldCom Petition* at 10.

²⁹⁷ Laurent Clerc National Deaf Education Center, Gallaudet University, "Becoming a Sign Language Interpreter," <http://clerccenter.gallaudet.edu/InfoToGo/357.html> (visited 2/19/03).

²⁹⁸ *WorldCom Petition* at 10.

²⁹⁹ See 28 C.F.R. § 36.104.

2. Speed of Answer Requirement

a. Abandoned Calls

93. In the *Improved TRS Order*, the Commission amended its speed-of-answer requirements to require that abandoned calls, such as calls answered by the TRS facility but that never reach a CA, be included in determining whether the provider meets the requirement to answer 85 percent³⁰⁰ of the calls within 10 seconds or less.³⁰¹ The record indicated that including abandoned calls in the speed-of-answer determination was the only way to ensure compliance with the 85 percent standard, since otherwise the statistics could indicate that a provider is meeting this rule, when in fact consumers are being kept waiting in a queue for a CA.³⁰² NASRA expresses concerns about how the new speed-of-answer requirements and calculation of daily time measurement will impact negotiated contracts.³⁰³ WorldCom argues that misdialed 711 numbers (*i.e.*, calls dialed to 711 where the caller intended to call a different N11 number) will be common with implementation of the 711 access number, and that therefore TRS providers will find it difficult to comply with the requirement that they answer 85 percent of calls within 10 seconds if abandoned calls are included in the calculation.³⁰⁴ WorldCom therefore requests that the Commission allow a grace period of one year during which time dropped and abandoned calls would not be included in the calculation of speed of answer time.

94. The *Improved TRS Order* was published in the *Federal Register* on July 5, 2000. The 711 requirement did not go into effect until October 1, 2001. Therefore, to the extent WorldCom's request of a one year extension to implement the revised speed-of-answer requirements rests on its concern over the implementation of 711 dialing, it is without foundation. We further note that at the time of the petition, WorldCom predicted that there would be an increase of misdialing prior to the implementation of 711 access. However, we note that no significant misdialing has been reported, nor has any TRS provider reported difficulty in complying with the amended rules. Consequently, we deny the *WorldCom Petition*.

b. Speed-Of-Answer Requirements for STS and VRS

95. Background. In the *Improved TRS Order*, the Commission concluded STS and VRS fall within the definition of TRS.³⁰⁵ The Commission did not address, however, how the manner in which STS and VRS calls are made may affect our speed of answer requirements. WorldCom asks that we forbear from applying the speed-of-answer requirements established for traditional TRS to STS and VRS for one year. WorldCom argues that both of these types of calls generally require a longer set-up time than for traditional TRS calls.³⁰⁶ WorldCom states that the

³⁰⁰ Our current rules use the symbol for percent (%). We will adopt a change that will convert the symbol to the word "percent." This will make our rules more accessible to people that use assistive communications programs that do not recognize the symbol for percent, such as Braille.

³⁰¹ *Improved TRS Order* at ¶ 64; 47 C.F.R. § 64.604(b)(2).

³⁰² *Improved TRS Order* at ¶ 64.

³⁰³ See *NASRA Petition* at 1-2.

³⁰⁴ *WorldCom Petition* at 13.

³⁰⁵ See *Improved TRS Order* at ¶ 14 (as to STS); ¶ 22 (as to VRS).

³⁰⁶ *WorldCom Petition* at 8.

need to review special vocabularies, become familiar with the speech patterns of a STS caller, and determine other specific calling requirements may take over an hour. For this reason, WorldCom also asserts that application of our present speed of answer requirement could require providers to hire twice as many STS and VRS CAs.

96. Discussion. We conclude that WorldCom's request is moot as to VRS. In the *TRS Waiver Order*,³⁰⁷ the Commission granted with a request for a temporary waiver of the speed-of-answer requirements for VRS. The Commission stated that a temporary waiver of this requirement would permit more entrants into the VRS market and provide more time for technology to develop. The Commission noted that VRS is not a mandatory service and is still developing, and that, accordingly, waiver of the speed-of-answer requirement would assist in stimulating growth of the new service. Therefore, because these requirements have previously been waived for two years, we dismiss WorldCom's request.

97. We further conclude that the concerns expressed by WorldCom regarding STS call set-up time are not relevant to a speed-of-answer calculation, and we deny its request for a waiver of the speed-of-answer requirement for STS. Speed-of-answer refers to the time it takes to answer a call; the preparation time needed to successfully execute a TRS call occurs after the call has been answered. Accordingly, while STS calls may require additional set-up time, we find no reason why the initial response to an STS call should be any greater than for any other TRS service. We note that WorldCom and other TRS providers are required to provide appropriate staffing, and therefore if proportionally more CAs are needed for STS than for traditional TRS due to the nature of STS calls, permitting a waiver of the speed-of-answer requirement will not address that fundamental difference.

3. Non-Shared Language TRS

98. In the *Improved TRS Order*, the Commission adopted a non-English language TRS requirement,³⁰⁸ concluding that "non-English language relay services which relay conversations in a shared language" are TRS.³⁰⁹ We required that interstate TRS providers offer TRS in the Spanish language, and encouraged state providers to offer other non-English language relay services as dictated by the demographics of the relevant area.³¹⁰ The *Texas PUC Petition* urges the Commission to go beyond this present requirement and also find that multi-

³⁰⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, *Order*, 17 FCC Rcd 157 (2001) (*VRS Waiver Order*) (granting temporary waivers for VRS of certain TRS requirements, e.g., the requirement to handle all types of calls normally accepted by a common carrier, the requirement to have a system to immediately and automatically turn emergency calls over to the nearest public service answering point, and the requirement to provide equal access to interexchange carriers).

³⁰⁸ Our regulations define "non-English language relay service[s]" as a telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language. See 47 C.F.R. § 64.601(13). By relaying a conversation in a "shared language" we mean that both the calling and called party use the same language; therefore, in relaying the conversation the CA does not translate what is typed or voiced from one language to another.

³⁰⁹ See *Improved TRS Order* at ¶ 29.

³¹⁰ *Id.* at ¶ 31; 47 C.F.R. § 64.603.

lingual translation relay services (*i.e.*, non-shared language TRS) provided by an interstate TRS provider are reimbursable from the Interstate TRS fund.³¹¹ Sprint filed comments³¹² supporting the *Texas PUC's Petition*, encouraging the Commission to adopt a requirement for multi-lingual relay services to address non-shared language TRS. Based on issues raised in *Texas PUC Petition*, we will include this matter in the attached *NPRM*. We will seek comment on whether the Commission should allow interstate non-shared language translation service through TRS to be reimbursed by the Interstate TRS fund.

4. Procedural Issues

a. Consumer Complaint Logs

99. In the *Improved TRS Order*, the Commission required TRS providers to maintain a log of consumer complaints.³¹³ In addition, the *Improved TRS Order* required that the log be retained until the next application for certification is granted.³¹⁴ Florida PSC notes that the Commission did not include a rule to effectuate these provisions. Florida PSC asks on reconsideration that we adopt rules to effectuate the requirements that TRS providers maintain a consumer complaint log and retain the log until the next application for certification is granted. In the *Improved TRS Reconsideration Order*, the Commission on its own motion added a rule³¹⁵ relating to the requirements for consumer complaint logs.³¹⁶ Accordingly, Florida PSC's request has been addressed and is moot.

b. Reorganization and/or Consolidation of Rules

100. Florida PSC requests that the Commission place its regulations for the permissible rate of call blocking in one location in the rules. Presently, section 64.604(b)(2) of our rules requires adequate staffing to allow 85 percent of all calls to be answered within 10 seconds, and requires a LEC to provide upon request to TRS administrators and TRS facilities the call attempt rates and the rates of calls blocked between the LEC and the relay.³¹⁷ Section 64.604(b)(4) of our rules requires that TRS facilities use adequate network facilities so that under projected calling volume, "the probability of a busy response due to loop trunk congestion [will] be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network."³¹⁸ Florida PSC argues that "for rule clarity," these matters should be addressed "in the same part of the rule."³¹⁹

101. The Florida PSC raises a valid point regarding the placement of rules covering the

³¹¹ *Texas PUC Petition* at 3.

³¹² Sprint Comments at 4.

³¹³ *Improved TRS Order* at ¶ 121.

³¹⁴ *Id.*

³¹⁵ 47 C.F.R. § 64.604(c)(1).

³¹⁶ *Improved TRS Reconsideration Order*, FCC 00-200, at ¶¶ 4-5.

³¹⁷ See 47 C.F.R. § 64.604(b)(2).

³¹⁸ 47 C.F.R. § 64.604(b)(4).

³¹⁹ *Florida PSC Petition* at 5.

same functionality, *e.g.*, the permissible rate of call blocking and the responsibility of a TRS facility to provide adequate network capacity. We received no comments opposing such reorganization. In response to the rule changes adopted this *Report and Order*, as well as the Florida PSC Petition for Reconsideration, and in the interest of administrative efficiency, we have moved certain rules and/or consolidated various rules to present the responsibilities of the various parties more clearly in the mandatory minimum standards. The revised rules are found in Appendix D of this *Order*.

c. Extension of Time For Effective Date of Rules

102. The Florida PSC and NASRA request that the Commission extend the time in which the new regulations adopted in the *Improved TRS Order* become effective.³²⁰ Both parties note that, in the view of the new regulations, state contracts with TRS providers may have to be re-let and 30 days does not provide enough time for compliance. In the *Improved TRS Reconsideration Order*, the Commission on its own motion extended the effective date of the new regulations.³²¹ Accordingly, these requests have been addressed and are moot.

VI. NOTICE OF PROPOSED RULEMAKING IN CG DOCKET NO. 03-123

103. In this *NPRM*, we continue our inquiry into TRS technology and various improved services and features that may further the statutory goal of functional equivalency.³²² In some cases, we seek to develop a more comprehensive record concerning proposals first raised in the *Improved TRS FNPRM*. Since the *Improved TRS Order & FNPRM* was released, technological advancements have taken place that merit attention. More broadly, we recognize that the functional equivalency standard itself contemplates the periodic reassessment of our TRS regulations.³²³ Therefore, as set forth below, we seek comment on matters that include new types of calls and new technologies, IP Relay, and emergency preparedness. Our goal is to continue to improve the quality and level of service of TRS.

A. National Security/Emergency Preparedness for TRS Facilities and Services

104. On November 17, 1988, the Commission issued a Report and Order establishing the Telecommunications Service Priority Program (TSP) as the regulatory, administrative, and operational framework for restoring and providing certain priority telecommunications services

³²⁰ See, *e.g.*, *Florida PSC Petition* at 1-2; *NASRA Petition* at 1-2.

³²¹ In the *Improved TRS Reconsideration Order*, we stated that the effective date for the rule changes were as follows: Amendments to sections 64.601 through 64.605 of the Commission's rules (other than the amendments to sections 64.604(c)(2) and 64.604(c)(7)), were effective 180 days from the date of publication of the *Improved TRS Reconsideration Order* in the Federal Register. The amendments to section 64.604(c)(2) were effective June 30, 2000. The amendments to section 64.604(c)(7) were effective 30 days from the date of publication of the *Improved TRS Reconsideration Order* in the Federal Register. The *Improved TRS Order* as amended by the *Improved TRS Reconsideration Order* was published in the *Federal Register*, on June 21, 2000, 65 FR 38462.

³²² See 47 U.S.C. § 225(a)(3).

³²³ TRS regulations are found at 47 C.F.R. § 64.601 *et seq.*

in the event of an emergency.³²⁴ The targeted priority telecommunications services – called the National Security and Emergency Preparedness (NS/EP) recovery priorities – are contained in our regulations.³²⁵ As a general matter, NS/EP priorities are those services necessary to respond to and manage any event or crisis (local, national, or international) that causes, or could cause, serious harm to life or property. These priorities include restoring telecommunications services for the general public, but they do not presently address the provision of TRS.³²⁶

105. In view of the functional equivalency mandate, and the critical importance of telecommunications to all persons in the time of an emergency, we tentatively conclude that it is appropriate to assign at least the same NS/EP priority to TRS that applies to LECs or other telecommunications services available to the general public. In most cases, TRS is the only means of communication between persons with hearing or speech disabilities and emergency services and other persons. We note that our rules already require that TRS facilities have redundancy features, including uninterruptible power sources for emergency use, that are functionally equivalent to those in the central switching office in the public switched telephone network (PSTN).³²⁷ We therefore tentatively propose that TRS and TRS facilities receive an NS/EP priority status commensurate with that given to LEC facilities, and seek comment on whether our rules should be amended to provide for the continuity of operations of TRS facilities in the event of an emergency. That way, if operation of the LEC and the TRS facility were compromised during an emergency, both facilities would be reinstated simultaneously. We also seek comment on other means by which we might ensure equal treatment of LEC facilities and TRS facilities in this context. Finally, we seek comment on whether TRS providers and state TRS programs must provide an operational plan, beyond that already required in our rules, to ensure the survivability and continued operations of TRS facilities in case of an emergency.

³²⁴ See, e.g., *National Security Emergency Preparedness Telecommunications Service Priority System*, GEN Docket No. 87-505, *Report and Order*, FCC 88-341 (1988), 3 FCC Rcd 6650 (1988); see also *National Security Emergency Preparedness Telecommunications Service Priority System*, GEN Docket No. 87-505, *Memorandum Opinion and Order*, 4 FCC Rcd 8473, 54 Fed. Reg. 50622-01 (1989). The TSP Program was created as an amendment to Part 64 of the FCC's Rules and Regulations (Title 47 C.F.R.). The FCC designated the Executive Office of the President (EOP) as administrator of the TSP Program. The EOP delegated its responsibilities to the Manager of the National Communications System (NCS), which, in turn, assigned the administration and execution of the TSP Program to the Office of Priority Telecommunications (OPT) located at the NCS. The Commission also participates in the Network Reliability and Interoperability Council and has convened a Homeland Security Policy Council. See <http://www.fcc.gov/hspc/>.

³²⁵ 47 C.F.R. Part 64, Appendix A Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NS/EP).

³²⁶ See 47 C.F.R. Part 64, Appendix A Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NS/EP). The TSP Program has two components, restoring existing service and providing any necessary new service. If a restoration priority is applied to an existing telecommunication service, efforts will be made to restore that service before other non-TSP services. TSP restoration priorities are assigned before any particular service outage occurs based on the importance of that service. A provisioning priority is obtained to facilitate priority installation of new telecommunication services. As a matter of general practice, telecommunications service vendors restore existing TSP services before providing for new TSP services.

³²⁷ See 47 C.F.R. § 64.604(b)(4).

B. Mandatory Minimum Standards

1. Operational Standards

a. Security of IP Relay Calls

106. Currently, our confidentiality rule provides that CAs are prohibited from disclosing the content of any relayed conversation regardless of content.³²⁸ We believe, that in order to further ensure confidentiality during IP Relay calls, additional requirements may be necessary. Although IP Relay is bound by our strict TRS rules on confidentiality, use of the Internet does not come with the same privacy protections as does traditional TRS over the PSTN. With PSTN-based TRS, each call is carried over a dedicated circuit and is therefore highly secure. IP Relay involves information packets that are sent via the Internet, the conversations are channeled through the third party that is the TRS provider. For this reason, for example, many e-commerce merchants who take credit card orders provide message encryption³²⁹ to maintain the security of private information.

107. We seek comment on whether IP Relay calls should be provided with the level of security using encryption that is commonly used in commercial transactions over the Internet. We also seek comment to determine whether alternative security measures exist or are expected that could be used by IP Relay providers to ensure the security of IP Relay transmissions. We further seek comment on whether encryption or alternative security measure can be best achieved without requiring registration, sign-ins, or passwords for IP Relay users.

b. Emergency Call Handling over Wireless Networks

108. Previously in the *Report and Order*,³³⁰ we described the current problems associated with making an emergency call with a wireless telephone to a TRS facility via 711 or another direct dialing access number. We seek comment on how TRS facilities currently route emergency wireless 711 calls. In particular, we seek information on how TRS facilities determine the appropriate PSAP to which the call should be routed. We seek comment to learn what it would entail for TRS facilities to route a wireless TRS call to the same PSAP that would receive the call if the same caller dialed 911 on a wireless telephone.³³¹ We also seek comment

³²⁸ See 47 C.F.R. § 64.604(a)(2). CAs are permitted to transfer certain information to a PSAP regarding emergency situations. See, e.g., 47 C.F.R. § 64.604(a)(4). In addition, in limited circumstances disclosure is permitted for law enforcement purposes. See *IP Relay Declaratory Ruling* at ¶ 14 (discussing application of 47 U.S.C. § 64.605 to TRS).

³²⁹ Encryption is the transformation of data into a form unreadable by anyone without a secret decryption key. Its purpose is to ensure privacy by keeping the information hidden from anyone for whom it is not intended. *Newton's Telecom Dictionary* 266.

³³⁰ See discussion of emergency call handling and wireless TRS calls at section IV.B.2, *supra*.

³³¹ See also, e.g., *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, IB Docket No. 99-67, Further Notice of Proposed Rulemaking, FCC 02-326, 17 FCC Rcd 25,576 (2002); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, CC Docket No. 94-102, Order to Stay, FCC 02-210, 17 FCC Rcd 14,841 (2002); *Carrier Transition Reports for Implementation of the 911 Abbreviated Dialing Code Pursuant to*

(continued....)

on whether there would be any difference in this context if an emergency call is made to the TRS facility via 711 or a direct dialing access number.

109. Further, we seek comment to determine whether wireless carriers have the capability and should be required to transmit Phase I or Phase II E911 information to TRS facilities, and, if Phase I or Phase II E911 capability does not exist, whether the TRS facility should be exempt from the requirement to route wireless 711 emergency calls to the same PSAP that would receive the call if the same caller directly dialed 911 on a wireless telephone, or if some other system or mechanism could provide equivalent functionality or outcome in this context. Commenters should discuss the benefits as well as the challenges associated with any particular systems that they propose. Interested parties should also comment on the technological feasibility and/or readiness of TRS facilities to implement the requirements associated with such systems. We also seek comment on whether TRS facilities should be required to forward Phase I or Phase II E911 location information to the appropriate PSAP in addition to routing the call. Commenters should discuss the benefits as well as the challenges associated with such a requirement.

c. Non-English Language TRS

110. Our regulations define “[n]on-English language relay service” as a “telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.”³³² In the *Improved TRS Order*, we required that Interstate TRS providers offer TRS in the Spanish language, and encouraged state providers to offer other non-English language TRS as dictated by the demographics of the relevant area.³³³ We also found that non-English language TRS that relay conversations in a shared language are telecommunications relay services, and therefore can be reimbursed from the Interstate TRS fund.³³⁴

111. In addressing this issue in the *1998 TRS Notice of Proposed Rulemaking*,³³⁵ we noted that “some TRS providers may be offering ‘translation’ services to TRS users (*i.e.*, communication between two parties who each use a different language) including Spanish-language and [American Sign Language] ASL translation services.”³³⁶ We tentatively concluded, however, “that any such ‘translation’ TRS, especially foreign language translation

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the Wireless Communications and Public Safety Act of 1999, CC Docket No. 92-105, WT Docket No. 00-110, Public Notice, DA 02-507 (*rel'd* March 01, 2002).

³³² 47 C.F.R. § 64.601(13). By relaying a conversation in a “shared language” we mean that both the calling and called party use the same language; therefore, in relaying the conversation the CA does not translate what is typed or voiced from one language to another.

³³³ *Improved TRS Order* at ¶ 29.

³³⁴ *Id.*

³³⁵ *Telecommunications Services for Hearing-Impaired and Speech Impaired Individuals, and the Americans with Disabilities Act of 1990, Notice of Proposed Rulemaking*, CC Docket No. 90-571, FCC 98-90, 13 FCC Rcd 14187 (1998)(*1998 TRS Notice of Proposed Rulemaking*).

³³⁶ *1998 TRS Notice of Proposed Rulemaking* at ¶ 39.

services, are value-added TRS offerings that go beyond 'relaying' of conversation between two end users."³³⁷ At the same time, we asked whether an exception should be made for ASL translation services. We noted that ASL is a language unique to the deaf community," and therefore "ASL translation services may be necessary to provide 'functional equivalency' to ASL users."³³⁸

112. In the *Improved TRS Order*, the Commission concluded that the provision of ASL translation service was necessary to provide "functional equivalency" to ASL users.³³⁹ We noted that ASL is a language with a syntax and grammar different than that of English, and that because many ASL relay users type in ASL syntax rather than in English syntax, a CA must be able to correctly translate the ASL text message to English in order to avoid translation inaccuracies.

113. In response to the *Improved TRS Order*, the Texas PUC filed a petition³⁴⁰ requesting that the Commission allow other non-shared language relay translation service (beyond ASL translation service) to be reimbursable from the Interstate TRS Fund.³⁴¹ The Texas PUC asserts that there is a great demand for the translation of non-shared language through TRS.³⁴² The Texas PUC asserts that states with large Hispanic populations often have a substantial number of Hispanic children who are deaf and, as a result, do not learn Spanish. Because these children are educated in ASL and English, many deaf children of Spanish speaking families are not able to participate in family communications.³⁴³ The Texas PUC asserts that TRS is often the only means of communication for these families. The Texas PUC asserts also that calling through TRS first in order to reach a commercial translation service is time-consuming and cost-prohibitive to many Hispanic families with deaf children.³⁴⁴ Sprint supports the *Texas PUC Petition*, stating that the provision of Spanish-to-English relay service is absolutely necessary because otherwise hearing-impaired children of foreign language-speaking

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Improved TRS Order* at ¶¶ 44-46.

³⁴⁰ Public Utilities Commission of Texas (Texas PUC), *Petition for Reconsideration*, filed March 24, 2000.

³⁴¹ This service would require TRS providers to offer translation services for those non-English languages common in their area, for example, Spanish-to-English conversations through a CA/translator. The petition is not clear if the request is limited to Spanish-to-English conversations, or any multi-lingual relay service, and therefore we include this matter in this *NPRM*.

³⁴² Hispanics are the fastest growing minority group in the deaf school age population in the United States. This is particularly true in Texas. Schildroth & Hotto, Changes In Student And Program Characteristics. American Annals Of The Deaf, 141(2), 68-71 (1996), Published in Hispanic Outlook in Higher Education, May 2000, Jean F. Andrews, Ph.D. & Donald L. Jordan, Ph.D. Lamar University, Beaumont, TX.

³⁴³ There are more than 7,000 deaf children from Spanish-speaking homes in the U.S. ASL becomes the first language for many of these Hispanic youths because it is the first language that is fully accessible them, even though ASL is not their home language. Schildroth & Hotto, Changes In Student And Program Characteristics. American Annals Of The Deaf, 141(2), 68-71 (1996).

³⁴⁴ *Texas PUC Petition* at 2.

parents would be unable to communicate with their families.³⁴⁵ Sprint also asserts that the incremental cost of providing multi-lingual relay service would be “*de minimis*, and its inclusion in the TRS funding reports submitted by TRS providers to NECA would not have an appreciable impact on the payment amount or Interstate TRS Fund size.”³⁴⁶

114. Since the time we addressed this issue in the *1998 TRS Notice of Proposed Rulemaking*, the Commission has developed a better understanding of the needs of certain TRS consumers in this area, and recognizes that multi-lingual translation services through TRS may meet the unique needs of certain identifiable TRS users. We therefore seek comment on whether the Commission should allow TRS that employs a non-shared language translation service to be reimbursable from the Interstate TRS Fund. We also ask commenters to address whether provision of such a service is consistent with, or necessary under, our functional equivalency mandate. Commenters are also encouraged to provide information on the need for multi-lingual relay services, the costs associated with such services, and what would be involved for TRS providers to provide such services. In addition, the Commission seeks comment on whether multi-lingual relay services should be required on an intrastate and/or interstate basis, and if so, how it should be funded. The Commission also asks for comment on whether any of our TRS rules should be modified if we require multi-lingual translation services for TRS, and an appropriate time line for such an adoption. Finally, the Commission seeks comment on how, if adopted, multi-lingual translation services for TRS would be implemented with VRS, STS and other forms of TRS.

2. Technical Standards

a. Speed of Answer and Call Set-up Time

115. In the *First Report and Order*, the Commission adopted the rule that TRS providers must begin the actual relaying of a TRS call within 30 seconds of answering the call.³⁴⁷ In the *Improved TRS Order*, we amended this speed of answer requirement to require that TRS facilities, after answering the call, immediately handle the call, whether by a CA, or an automated process, but not place the call in a distribution queue. The rule now states that TRS providers shall “. . . answer 85 percent of all calls within 10 seconds by any method which results in the [TRS] caller’s call immediately being placed, not put in a queue or on hold.”³⁴⁸ Therefore, TRS providers must ensure that after a TRS call is “delivered” to the TRS facility’s network, *i.e.*, when the relay facility’s equipment accepts the call from the LEC and the PSTN actually delivers the call to the TRS facility,³⁴⁹ the call is promptly handled. This process is also referred to as “speed of answer.”

116. After a TRS call is answered pursuant to our speed of answer rule, the TRS provider may require additional time to set up the call. Some commenters have expressed frustration with the length of time it takes to set up certain forms of TRS, such as STS and VRS,

³⁴⁵ Sprint *Reconsideration Comments* at 4.

³⁴⁶ *Id.*

³⁴⁷ *First TRS Report and Order* at ¶ 21.

³⁴⁸ *Improved TRS Order* at ¶ 61; 47 C.F.R. § 64.604(b)(2).

³⁴⁹ 47 C.F.R. § 64.604(b)(2).

and certain types of non-traditional TRS calls, such as one and two-line VCO, and one and two-line HCO.³⁵⁰ The set up of such calls often require a series of steps. For example, a two-line VCO call requires the TRS user and the CA to activate a three-way calling feature and then bring in the intended called party before the CA begins relaying the conversation.³⁵¹ Furthermore, STS consumers report they often experience delays in being transferred to specially trained STS CAs.³⁵² Our regulations currently do not address call set up time.

117. The Commission recognizes that there may be several ways to reduce call set-up time, especially for non-traditional TRS calls. We therefore seek comment on how call set-up can be effectively and efficiently handled. We also seek comment on how call set-up time may be reduced with the aid of new technology or by any other methods. Finally, we seek comment on whether the Commission should require a specified call set-up time for various types and forms of TRS calls, and if so, how such set-up time should be measured.

b. TRS Facilities

(i) Communication Access Real-time Translation

118. One way the speed of a TRS call can be increased is by using communication access real-time translation (CART).³⁵³ With CART, a stenographer can type speech verbatim at a significantly higher word per minute (wpm) rate than is possible with typing on a standard keyboard. As a result, the conversation pace proceeds at a much higher rate (150 to 200 wpm) during a call. Maryland Relay offers CART for TRS users making three-way and conference calls.³⁵⁴

119. The Commission seeks comment to determine whether TRS providers should offer CART or CART-type services to improve the speed of TRS. We request detailed information regarding how CART, or similar technology and equipment, may be utilized by a TRS facility, including technical requirements, and CA training issues, as well as any challenges to providing this service through TRS. Commenters should provide specific information on any current CART relay uses, the application of CART relay in three-way or conference calls and other TRS scenarios, the benefits to TRS consumers of CART technology and stenographic service providers, the costs of providing CART relay, and any waivers, if appropriate, of Commission rules necessary to provide CART relay. We also seek comment on the supply of qualified CART providers. We ask, in particular, that associations representing CART providers provide specific information on the projected availability of qualified CART providers to meet the demand if CART is utilized by TRS facilities.

³⁵⁰ See generally Segalman Comments and STS Consumers Comments; NAD/TAN/CAN Comments at 29 n.32; SHHH Comments at 13-14.

³⁵¹ See, e.g., http://www.sprintbiz.com/government/sprint_relay/features.html.

³⁵² See generally Segalman Comments and STS Consumers Comments.

³⁵³ Communication access real-time translation (CART) is an instant translation of the spoken word into English using a stenotype machine, notebook computer, and real-time software. See National Court Reporter's Association, CART, <http://www.cart.ncraonline.org/index.html> (visited January 24, 2003).

³⁵⁴ See The Relay Connection, Spring 2002 "Conference Calling with High-Speed Captioning."

(ii) Interrupt Functionality

120. In the *Improved TRS FNPRM*, we sought comment on the technological feasibility of providing TRS consumers with interrupt functionality.³⁵⁵ This feature allows a TTY user to interrupt incoming text messages in order to convey a message back to the CA, so that the TRS conversation is more like a conventional telephone conversation in which each party can begin speaking before the other party has finished speaking.³⁵⁶ When a TTY user is typing, or is receiving, a TTY message, he or she cannot respond (*i.e.* type his or her message in return) until the sending party completely stops typing on their TTY.³⁵⁷ The record reflects that some TRS providers now offer some kind of interrupt functionality, which demonstrates that it is technologically feasible to do so.³⁵⁸ However, we seek additional information about how the interrupt functionality is being provided, whether any non-proprietary TTY protocols are able to support interrupt functionality, and consumer use of interrupt functionality.

(iii) TRS Consumers' LEC Offerings

121. Anonymous call rejection, call screening, and preferred call-forwarding are LEC features offered to voice users.³⁵⁹ Anonymous call rejection is a feature that automatically rejects calls to the user's number when the calling party has blocked his or her Caller ID information.³⁶⁰ Call screening or selective call blocking allows a user to create a list of telephone numbers (no-call list) from which the user does not wish to accept calls.³⁶¹ Calls from numbers on the no-call list receive an announcement that informs the caller that the called party is not receiving calls at this time. All calls not on the no-call list are placed to the called party. Preferred call-forwarding allows a user to create and maintain a list of "special" telephone numbers where, if a call is received from one of those numbers, the call will be forwarded to another number.

122. Anonymous call rejection, call screening, and preferred call-forwarding are all services that affect how incoming calls to the subscriber will be handled or directed. These

³⁵⁵ *Improved TRS FNPRM* at ¶ 138.

³⁵⁶ *See, e.g.*, TDI Comments at 6.

³⁵⁷ In a TRS call, the CA serves as a middle person, *e.g.*, when the call is between a TTY and a voice caller, the CA converts a TTY message to voice, and vice versa. When both end users are TTY users, the call is not a TRS call.

³⁵⁸ *See, e.g.*, California PUC Comments at 6; Massachusetts ATP Comments at 3.

³⁵⁹ The record does not demonstrate whether certain other features about which we initially sought comment, such as call back-redial, repeat dialing, anonymous call rejection, V.18 protocol, and other TTY protocols should be required as part of the TRS mandatory minimum standards. *See Improved TRS Order* at ¶¶ 132, 138. We also sought comment on call waiting and distinctive ringing, but did not receive sufficient information on these features as mandatory minimum standards. *See Improved TRS FNPRM* at ¶ 138. Based on the record we conclude that at this time these features are not TRS dependent. We therefore will not continue our inquiry into those features.

³⁶⁰ *See generally In the Matter of Petition for Rulemaking Filed by Albert C. Keulling*, DA 98-176, 13 FCC Rcd 2448 (1998) (Commission rejects proposal to have a national rule requiring that automatic call rejection be made available to all users at no charge for calls made with Caller ID blocking).

³⁶¹ *Improved TRS FNPRM* at ¶ 138.

incoming call services respond to the identification of the caller or, in some cases, the lack of such identification. We seek comment on their possible application in TRS. We tentatively conclude these services should be provided to TRS customers if they are offered by the subscribing TRS customer's local carrier *and* if the TRS facility can send Caller ID to the local carrier. We encourage commenters to provide detailed information on the possible provision of these services, relevant technical requirements for TRS facilities and users, and how these features or services would be implemented.

(iv) Talking Return Call

123. One telephone feature widely available in the United States to non-TRS users, that could be provided to TRS users if there was a change in the routing order of the TRS call, is *talking return call*, sometimes referred to as "automatic call-back." Talking return call is a feature widely available in the United States by non-TRS users. Talking return call allows a caller to automatically return the last incoming telephone call, whether or not the call was answered. To use this feature, the user enters a code (such as "*69") to obtain the telephone number of the party that last called the user's telephone number. The customer will then receive the last incoming telephone number via voice. Unfortunately, this is largely unusable by someone who is deaf. The feature includes an additional option for the caller to enter another code such as "1" to request that the carrier call the party in question. Deaf and hearing-impaired callers may also be able to use that feature, but without first hearing the number of the party who will be called. With this feature, if the called party's line is busy, the called party's switch monitors the called line for a given period of time to see if the called party hangs up and his/her line becomes available to receive calls. When the called party hangs up, the user is notified by a special signal pattern that the talking return call feature has connected with the intended party.

124. There is no way for the TRS facility to get the number of a party who called a TRS consumer directly, *i.e.*, made a non-TRS call to the TRS consumer. However, it is possible in principle for the TRS facility to provide the identification of the last party who called the TRS consumer via the TRS facility (unless the caller's information was blocked by the caller). If the TRS consumer is a TTY user, it may also be possible for the TRS facility to provide this information via a TTY interface, instead of the voice interface used by LECs. Finally, the TRS facility may be able to arrange to monitor a busy called line to see if it becomes idle and available to receive a call. We seek comments on the feasibility of TRS providers offering such TRS services and whether the talking return call functionality should be required as a mandatory minimum standard.

c. Technology

(i) Speech Recognition Technology

125. In the *Improved TRS FNPRM*, the Commission sought comment on computer-assisted speech recognition technology, sometimes referred to as voice-to-text (VTT) technology,³⁶² tailored for the TRS environment.³⁶³ Several commenters in that proceeding

³⁶² *Improved TRS FNPRM* at ¶ 138.

³⁶³ See Ultratec Comments at 4. With VTT, the CA, instead of typing, re-voices the voice caller's message into a specialized speech recognition device that translates the speech into text.

asserted that speech recognition technology could significantly shorten the time it takes for the voice caller's message to be converted into text,³⁶⁴ because it is nearly impossible to type the words into text as fast as dialogue is spoken over the telephone (*i.e.*, in real time). Several states have been undergoing trials with a type of speech recognition technology.³⁶⁵ The Commission believes that speech recognition technology may be a promising technology that can be incorporated into TRS to reduce the time it takes for a voice caller's message to be converted into text. At this time, however, we do not have adequate information on this new technology to require speech recognition technology as a mandatory minimum standard. We therefore seek comment on the current status of the development of speech recognition technology. We also seek comment on the extent, if any, to which TRS providers have already integrated speech recognition technology into their operations. Commenters are encouraged to address non-proprietary technologies available to support speech recognition technology, and whether any specific CA training might be necessary.

(ii) Transmission Speed

126. Text-based TRS calls normally take four times as long as similar voice-to-voice calls.³⁶⁶ Since initial guidelines for TRS were established by the Commission in 1991,³⁶⁷ new transmission protocols³⁶⁸ for TTYs have evolved that increase transmission speed. Although 45.45 bps Baudot is still the dominant protocol and the one present in many TTYs, other protocols, such as Bell 103 ASCII, V-series ASCII protocols, and proprietary protocols are also used in TTY products.³⁶⁹ Because faster transmission speeds for text-based TRS calls will move closer to the transmission speed of a voice-to-voice call, we seek comment on whether improved transmission speed for the TTY leg of calls through TRS is technologically feasible. Specifically, commenters should indicate what technical requirements are necessary to improve transmission speed, as well as any additional challenges that may be involved. We seek comment on whether the use of legacy, or older models, of TTYs prevents TRS users from benefiting from technological advancements in TRS. We also seek comment on how improved transmission speed could be compatible with legacy TTYs.

(iii) TTY Protocols

127. In the *Improved TRS FNPRM*, the Commission sought comment on the use of new transmission TTY protocols, such as V.18, for TTYs and similar products that might

³⁶⁴ See Ultratec Comments at 5. Ultratec's "CapTel" speech recognition technology transfers words to text at twice the speed of a typical CA's manual typing speed.

³⁶⁵ Ultratec's *CapTel* and *FasTan* speech recognition capabilities are currently being tested in several states. See, e.g., Maryland Dept. of Budget and Mgt. Comments at 3; Sprint *ex parte* Meeting, Oct. 5, 2001.

³⁶⁶ See, e.g., Ultratec Comments at 4; Maryland Budget and Mgt. Comments at 3.

³⁶⁷ Initial TRS regulations were effective pursuant to *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Report and Order and Request for Comments, 6 FCC Rcd 4657 (1991) (*First TRS Report and Order*).

³⁶⁸ A protocol is a specific set of rules, procedures or conventions relating to format and timing and data transmission between two devices. See generally *Newton's Telecom Dictionary*.

³⁶⁹ *Improved TRS FNPRM* at ¶ 139.

improve the interconnection of TRS facilities or TTYs with wireless devices.³⁷⁰ The V.18 protocol is intended for use in text telephones, interworking units, text relay services, emergency centers, and computers to be used for text telephony in the public switched telephone network (PSTN).³⁷¹ The record indicates that the V.18 protocol standard and other possible TTY protocols, such as V.21, might improve the feasibility of interconnecting TRS facilities or TTYs with wireless devices;³⁷² however, we did not receive adequate information on this issue. Therefore, we seek further comment regarding the extent to which innovative non-proprietary protocols for TTY products are currently being used, and any advantages or disadvantages that such protocols may present to TRS providers in this context.

C. Public Access to Information and Outreach

128. Our TRS current mandatory minimum standards require carriers to take certain steps to ensure that the general public has access to information concerning TRS. The rules require that:

Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population. In addition, each common carrier providing telephone voice transmission services shall conduct, not later than October 1, 2001, ongoing education and outreach programs that publicize the availability of 711 access to TRS in a manner reasonably designed to reach the largest number of consumers possible."³⁷³

129. We have noted previously that this rule may not be fully effective in ensuring that the public is aware of TRS.³⁷⁴ We seek comment on the scope of this problem. What is the current rate of hang-ups on TRS calls? How many of these are attributable to customer confusion? How effective are outreach efforts at addressing these issues?

130. As a result, we seek comment on the kinds of additional outreach requirements we should require of TRS providers. For example, we seek data regarding what types of outreach is most effective for these types of services. Are there any successful state programs that a national program could be modeled on? What should be the role of federal funding in these efforts? How should we balance the additional charges to consumers with the benefits of outreach? What types of materials are most effective at reaching targeted consumers? What distribution methods

³⁷⁰ See *Improved TRS FNPRM* at ¶¶ 139-144.

³⁷¹ See *Improved TRS Order and FNPRM* at n. 275.

³⁷² See, e.g., AT&T Comments at 10; Gallaudet Trace Comments at 3-4; NAD/TAN/CAN Comments at 31-33; TDI Comments at 14-15.

³⁷³ 47 C.F.R. § 64.604(c)(3) *Public Access to Information*.

³⁷⁴ See, e.g., *Improved TRS FNPRM* at ¶ 104.

are most effective? Further, we seek comment on whether TRS providers, in addition to directing outreach information to their customers, might adopt training for their employees so that all of their employees fully understand how TRS works and how it benefits the public so that they can, in turn, better inform consumers about TRS. We also seek comment on whether we should add these and other more particular or far-reaching outreach requirements of the mandatory minimum standards.

131. In addition, we seek comment on whether the states should have the obligation to reimburse intrastate TRS providers for any additional outreach requirement adopted in this proceeding, and whether the Interstate TRS Fund should reimburse interstate TRS providers for such outreach.³⁷⁵ In this regard, we note that eligible telecommunications carriers that receive universal service support must "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service."³⁷⁶

132. We also seek comment on whether particular outreach requirements should be added to the requirements of the certification process that we have proposed in this *NPRM*, which would be conducted by the Commission for TRS providers seeking compensation from the Interstate TRS Fund. In this regard, we seek comment on whether TRS providers eligible for reimbursement from the Interstate TRS Fund would be required to engage in various specified outreach efforts as a precondition to receiving compensation from the fund.

133. Finally, we seek comment on how, if the Commission were to require a coordinated outreach campaign (instead of or in addition to the outreach required of individual TRS providers), such a campaign could be funded. We note that in the *Improved TRS FNPRM*³⁷⁷ we sought comment on the suggestion made by a number of commenters that an expanded outreach effort be supported by the Interstate TRS Fund.³⁷⁸ The Interstate TRS Fund is funded by mandatory contributions from all providers of interstate telecommunication services.³⁷⁹ Section 225 and our rules provide for payments from the Interstate TRS Fund to compensate eligible TRS providers for their reasonable costs of providing interstate TRS.³⁸⁰ We seek comment, including legal analysis, on whether the Interstate TRS Fund may be used to compensate third parties (*i.e.*, non-providers) for the cost of a coordinated outreach program. We also seek comment to determine whether the cost recovery provisions of section 225³⁸¹ require that portions of an outreach campaign designed for implementation at the state level must be paid for by the states.

³⁷⁵ We note that some providers currently submit some limited advertising costs to NECA, the interstate TRS Fund administrator, as part of their TRS operating expenses on which the per minute TRS reimbursement rate is based.

³⁷⁶ 47 C.F.R. § 54.405(b).

³⁷⁷ *Improved TRS FNPRM* at ¶¶ 134-136.

³⁷⁸ See, e.g., Maryland Comments at 13; NAD/CAN Reply Comments at 12; TDI Reply Comments at 15.

³⁷⁹ 47 U.S.C. § 225(d)(3)(B); 47 C.F.R. § 64.604(c)(5)(i-ii), (iii)(A-B).

³⁸⁰ 47 C.F.R. § 64.604(c)(5)(iii)(E).

³⁸¹ 47 U.S.C. § 225(d)(3).

D. Procedures for Determining TRS Providers' Eligibility for Receiving Payments from the Interstate TRS Fund

134. Background. As noted above, the Commission issued its first order implementing TRS on July 26, 1991 and TRS became available on a uniform, nationwide basis pursuant to Commission regulations in July 1993.³⁸² Under its statutory mandate, the Commission has revisited the regulations governing TRS over the years to make available to consumers new forms of TRS, finding that TRS need not be limited to either telecommunications services³⁸³ or services that require a TTY.³⁸⁴

135. In March 2000, the Commission issued the *Improved TRS Order* which, among other things, concluded that VRS was a form of TRS, but tentatively concluded that the provision of VRS should not be mandatory given its technological infancy. The Commission nevertheless encouraged the use and development of VRS,³⁸⁵ and concluded that, on an interim basis, all VRS calls would be eligible for cost recovery through the Interstate TRS Fund.³⁸⁶ On April 22, 2002, the Commission released the *IP Relay Declaratory Ruling & FNPRM*, which further expanded the scope of TRS by concluding that IP Relay falls within the statutory definition of TRS.³⁸⁷ Although the Commission did not require that TRS providers offer IP Relay, it authorized, on an interim basis, recovery of all costs of providing IP Relay from the Interstate TRS Fund. In light of these developments, we now seek comment on whether our rules governing the provision of TRS and the eligibility of TRS providers to receive compensation from the Interstate TRS Fund, should be amended or modified.³⁸⁸ Section 225 requires the Commission to ensure that *interstate* and *intrastate* telecommunications relay services are available, to the extent possible and in the most efficient manner, to persons with

³⁸² 47 U.S.C. § 225(b)(1). Section 225 requires common carriers providing telephone voice transmission services to provide TRS throughout the areas they serve. The statute mandated an implementation date of no later than July 26, 1993. See 47 U.S.C. § 225(c). Prior to the enactment of Title IV, some states offered relay services, but the services offered differed from state to state, were subject to many limitations, and were generally limited to intrastate calls. See Strauss, Title IV – Telecommunications, Implementing The Americans With Disabilities Act at 156-158 (Gostin & Beyer ed. 1993).

³⁸³ See *Improved TRS Order* at ¶ 88 (“We find that section 225 does not limit relay services to telecommunications services, but...reaches enhanced or information services.”).

³⁸⁴ See, e.g., *Improved TRS Order* at ¶ 13.

³⁸⁵ *Improved TRS Order* at ¶¶ 23-27.

³⁸⁶ *Improved TRS Order* at ¶ 26. In 2001, the Commission addressed cost recovery methods for traditional TRS, Speech-to-Speech relay (STS), and Video Relay Service (VRS), and sought additional comments on the appropriate cost recovery mechanisms for VRS. See *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities – Recommended TRS Cost Recovery Guidelines/Request by Hamilton Telephone Company for Clarification and Temporary Waivers*, CC Docket No. 98-67, FCC 01-371, 16 FCC Rcd 22948, (2001)(*STS/VRS Order*).

³⁸⁷ *IP Relay Declaratory Ruling* at ¶¶ 1, 10-14.

³⁸⁸ 47 C.F.R. § 64.604(c)(5).

hearing and speech disabilities in the United States.³⁸⁹

136. Discussion. In this *NPRM*, we seek comment on whether, and if so, how, the Commission should amend its rules to address the provision of TRS in circumstances not presently covered by our regulations, including a provider's eligibility for cost recovery for services currently reimbursed solely from the Interstate TRS Fund. For example, there is currently no method for a TRS provider, providing only interstate TRS and not participating in a certified state program as an approved intrastate provider, to be reimbursed for its provision of interstate TRS. Because there is no federal certification process, interstate TRS providers may seek reimbursement from the Interstate TRS Fund only after they have shown that they are an approved provider in a state TRS program that has been certified by the Commission. This is because the certification process is currently left to the states.³⁹⁰ There is no federal certification process for interstate TRS providers.³⁹¹

137. We seek comment on whether the Commission should establish such a process.³⁹² If the Commission should find such a process appropriate, we tentatively conclude that the rules would require TRS providers to apply to the Commission for certification as an interstate TRS provider, providing evidence that they are in compliance with the mandatory minimum standards found in section 64.604 of our rules.³⁹³ TRS providers would also be required to keep a log of any complaints received, and their disposition of such complaints.³⁹⁴ Approved interstate TRS providers would be required to submit a report each year to the Commission detailing their compliance with the mandatory minimum standards and listing the resolution of each complaint filed against the provider. Upon review of such reports, if the Commission determined that a TRS provider failed to meet these requirements, the provider's certification would be revoked and it would not be eligible for reimbursement.³⁹⁵ We seek comment on these proposed rules. We also seek comment on whether we should require all interstate TRS providers seeking reimbursement from the Interstate TRS Fund to apply to the Commission, under the rules proposed above, regardless of their involvement in a certified state program.

138. The Commission has previously found that TRS providers providing IP Relay and

³⁸⁹ 47 U.S.C. § 225(b)(1). As we have noted, the legislative history of the ADA makes clear that the enactment of Title IV was intended to further of the universal service mandate of Section 1 of the Communications Act. House Report at 129.

³⁹⁰ 47 C.F.R. § 64.604(c)(5)(iii)(F)(1).

³⁹¹ Obviously, the Commission does exercise enforcement authority concerning violations of its TRS rules. See, e.g., *Publix Network Corp.; Customer Attendants, LLC; Revenue Controls Corp.; SignTel, Inc.; and Focus Group, LLC*, EB Docket No. 02-149, File No. EB-01-TC-052, *Order to Show Cause and Notice of Opportunity for Hearing (Publix Show-Cause Order)*, 17 FCC Rcd 11,487 (2002).

³⁹² See Appendix E of this *Order* for proposed rules.

³⁹³ 47 C.F.R. § 64.604.

³⁹⁴ These would include complaints filed against the provider directly as well as those filed against the provider in any states or before the Commission pursuant to section 64.604(c) of our rules.

³⁹⁵ See similar process for state TRS program certification, 47 C.F.R. § 64.605(e) – Suspension or revocation of certification.

VRS should be reimbursed, in both cases on an interim basis, from the Interstate TRS fund.³⁹⁶ The Commission reasoned that section 225 of the Act requires that "regulation governing TRS cost recovery shall 'generally' provide that costs caused by interstate TRS shall be recovered from all subscribers for every interstate service and costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction."³⁹⁷ Concerning both IP Relay and VRS, the Commission "interpreted the term 'generally' to give [it] the discretion to fund intrastate service from the interstate jurisdiction."³⁹⁸ As WorldCom explained in its original petition requesting Interstate TRS Fund reimbursement for IP Relay, "because the first leg of an IP Relay call comes over the internet, rather than from a telephone, there is no automatic way to determine whether any call is intrastate or interstate."³⁹⁹ Although both IP Relay and VRS are reimbursed exclusively from the Interstate TRS fund, providers of IP Relay and VRS, like every other provider of TRS, may only be certified for reimbursement if they are approved providers in a certified state TRS program.

139. We seek comment on whether the Commission should institute a certification process specifically for IP Relay, VRS, and any other technology that does not fit easily into the traditional jurisdictional separation of intrastate and interstate, for the period of time that such services are reimbursed from the Interstate TRS Fund. We also seek comment on whether the proposed federal certification rules, detailed above, should be modified in the case of IP Relay or VRS. We note that some current providers of VRS, and some potential providers of IP Relay and VRS, are not common carriers. We seek comment on whether this should influence the need for a federal certification process.

140. In some of the scenarios described above, a state agency has the authority to approve TRS providers to participate in a certified state TRS program, and such approval allows the providers to be reimbursed from the Interstate TRS fund. We seek comment on whether a TRS provider should be required to obtain federal certification whenever it provides TRS services that are reimbursed from the Interstate TRS Fund. This would include TRS services that may potentially be intrastate (such as IP relay or VRS) but for various reasons, including our inability to ascertain the origination point of the TRS call, the reimbursement for such services currently comes from the Interstate TRS Fund. We ask commenters to consider whether such a requirement is in keeping with the mandate of section 225.⁴⁰⁰

VII. PROCEDURAL MATTERS

A. *Ex parte* Presentations

141. This *NPRM* is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, in accordance with the Commission's rules, provided that

³⁹⁶ *IP Relay Declaratory Ruling* at ¶ 20; *Improved TRS Order* at ¶¶ 24-27.

³⁹⁷ *IP Relay Declaratory Ruling* at ¶ 21.

³⁹⁸ *IP Relay Declaratory Ruling* at ¶ 21.

³⁹⁹ *IP Relay Declaratory Ruling* at ¶ 15.

⁴⁰⁰ "[T]he Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States." 47 U.S.C. § 225(b)(1).

they are disclosed.⁴⁰¹

B. Regulatory Flexibility Act

142. As required by the Regulatory Flexibility Act (RFA),⁴⁰² the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA), which is set forth in Appendix B. Also as required by the RFA,⁴⁰³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM*. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed by the deadlines for comment on the *NPRM*, and should have separate and distinct headings designating them as responses to the IRFA. The Commission will send a copy of the *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking (Order)*, including the FRFA and IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

143. The *Report and Order, Order on Reconsideration* and *NPRM* contain new, modified and/or proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. These new, modified and/or proposed information collection(s) will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new, modified and/or proposed information collection(s) contained in this proceeding.

D. Comment and Reply Dates for NPRM in CG Docket No. 03-123

144. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 30 days after *Federal Register* Publication, and reply comments on or before 45 days after *Federal Register* Publication. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

145. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-

⁴⁰¹ See generally, 47 C.F.R. §§ 1.1200, 1.1202, 1.1204, 1.1206.

⁴⁰² See 5 U.S.C. §§ 604. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴⁰³ See 5 U.S.C. § 603.

mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325 Washington, DC 20554.

146. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, S.W., Room 6-C410, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CG Docket No. 03-123, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554.

VIII. ORDERING CLAUSES

147. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i) and 4(j), 201-205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 218 and 225, this SECOND REPORT AND ORDER and ORDER ON RECONSIDERATION ARE ADOPTED and Part 64 of Commission's rules is AMENDED as set forth in the attached Appendix D.

148. IT IS FURTHER ORDERED that the amendments to sections 64.601 through 64.605 of the Commission's rules as set forth in Appendix D ARE ADOPTED, effective thirty days from the date of publication in the *Federal Register*, except that rule sections 64.604(a)(3) and 64.604(c)(2), that contain information collection requirements under the PRA, are not effective until approved by OMB. The Commission will publish a document in the *Federal Register* announcing the effective date for those sections.

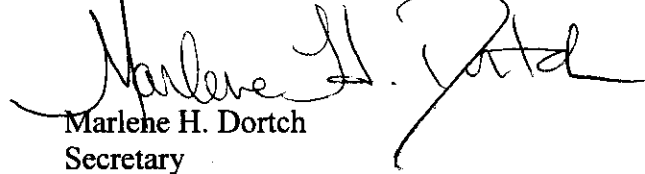
149. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 225, 303 (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C.

§§ 151, 154(i), 154 (j), 225, 303(r), and 403, the NOTICE OF PROPOSED RULEMAKING IS ADOPTED.

150. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this SECOND REPORT AND ORDER, ORDER ON RECONSIDERATION, AND NOTICE OF PROPOSED RULEMAKING, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

151. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY). This *Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking* can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

